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09/852,712	05/11/2001	Christian Toure	B-0692-US-PK/DO	5186
7590 11/17/2004 finnegan, henderson, farabow, GARETT & DUNNER, LLP 1300 I STREET N.W. WASHINGTON, DC 20005-3315			EXAMINER LUONG, SHIAN TINH NHAN	
			ART UNIT 3728	PAPER NUMBER

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/852,712
Filing Date: May 11, 2001
Appellant(s): TOURRE ET AL.

Robert E. McBride
For Appellant

EXAMINER'S ANSWER

Art Unit: 3728

This is in response to the appeal brief filed on 9/30/04.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying that no related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that the claims do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

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5,244,025	WEWERS	9-1993
3,129,811	WILLIAMS	4-1964
4,460,088	RUGENSTEIN et al	7-1984
5,018,625	FOCKE et al	5-1991

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 16-22 and 30-31 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Admitted Prior Art shown in Figures 1-2 and disclosed on page 4 over Wewers (US 5,244,025) and Williams. Admitted Prior Art discloses generally all of the elements of the claims, but lacks a square package and the folding method of the tissue. However, a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. In addition, Wewers teaches a square shaped package for receiving contents therein. Wewers is only cited to show the shape and not the contents.

With respect to the folding direction, Williams teaches an absorbent paper as shown in Figure 3 wherein the paper is folded at line 16 and then respectively at 17. Thereafter, the transversely folded paper may be folded along the longitudinal centerline 14 and then along the

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parallel equal spaced longitudinal fold line 15. In Figure 6, an alternative folding method is shown wherein the two outer panels formed by fold lines 17 are folded outwardly while the interior panels are folded in an opposing direction. The assembly displayed a M-shaped configuration when viewed from an end thereof. It would have been obvious to fold the absorbent paper in the manner as taught by Williams for the package of Admitted Prior Art to store the absorbent paper in a compact manner. Also, it would have been obvious to determine the desired height and width such as 50 and 58 mm, respectively, through routine experiment.

3. Claims 16-22 and 30-31 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Focke et al (US 5,018,625) or Regenstein et al (US 4,460,088) in view of Wewers (US 5,244,025) and William. Focke et al disclose a package comprising packs for stacks of folded paper tissues. The package has perforations as a means for tearing open the package. An adhesive strip is attached to the front portion to provide a reclosable opening. Rugenstein also shows a soft pack consisting of a plastic film. Perforations 29,30 extending inwardly from corners 27,28 of the pack. An adhesive strip 40 is applied to facilitate reclosing the opening. Neither Focke et al or Regenstein et al disclose a square package. However, a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. In addition, Wewers teaches a square shaped package for receiving contents therein. Notice that Wewers is only cited to show the shape and not the contents.

With respect to the folding direction, Williams teaches an absorbent paper as shown in Figure 3 wherein the paper is folded at line 16 and then respectively at 17. Thereafter, the transversely folded paper may be folded along the longitudinal centerline 14 and then along the

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parallel equal spaced longitudinal fold line 15. In Figure 6, an alternative folding method is shown wherein the two outer panels formed by fold lines 17 are folded outwardly while the interior panels are folded in an opposing direction. The assembly displayed a M-shaped configuration when viewed from an end thereof. Hence, it would have been obvious in view of Wewers and William to provide square shaped package for the package of Regenstien et al or Focke et al since they would work equally well and to store the tissue papers in a compact storage position. Also, it would have been obvious to determine the desired height and width such as 50 and 58 mm, respectively, through routine experiment.

(11) *Response to Argument*

Appellant's arguments filed on 9/30/04 have been fully considered but they are not persuasive. Appellant argues that the examiner has failed to disclose a folded tissue in the shape of a square and the modification of the rectangular packet of tissues of the primary references to include the square shape of Wewers is hindsight. But as mentioned in the rejection above, a change in shape is well recognized within the level of ordinary skill in the art, absent any showing of unexpected results. Here, there is no unexpected result because it is well known a square shape is more structurally sound than a rectangular shape article. That is, the elongated or longer side in a rectangular shaped article is more vulnerable to shock and damage than a shorter side of the article. Therefore, a skill artisan in the art would reasonably recognize change from rectangular shape to a square shape not only reduce material cost, but also provides rigidity and alternative design choice.

Appellant also indicated that the examiner has failed to explain why one skill in the art would expect to achieve the improved resistant to crushing shown by the instant invention. But

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appellant is arguing narrow than what is claimed. The claims never indicated the resistance of the package either structurally or functionally. Merely citing the dimension of the package does not imply the square package has the resistance that appellant deemed critical. With regard to the dimensions as recited in claim 17, it would have been obvious to determine the desired height and width such as 50 and 58 mm, respectively, through routine experiments.

With respect to claim 19, appellant argues that Figures 1 and 2 of the specification has a grasp area of between one sixth and one fourth of the area of the wrapper face and the instant invention requires $1/3$ to $1/2$. But appellant apparently has divided the surface area of Figures 1 and 2 in the specification or the Figures in Rugenstein et al or Focke et al. into six parts when one can easily divided the surface of the wrapper into two or three equal sizes. When you divide the surface into two or three equal parts, then the grasp area is between $1/3$ to $1/2$ of the wrapper surface.

In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, there is sufficient justification for combining Williams with the base reference. First of all, they are in the same field of endeavor because both are directed to packaging sheet material for cleansing purpose. Williams's folding steps are combined with the base reference to show how a sheet material is compactly folded and/or rolled

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within the package. Williams' cleansing sheet is readily disposable after use, which is used in the same manner as disclosed in the application. The cleaning sheets can be carried on the person or in the pocketbook. The sheets can be readily folded and or rolled, thereafter readily unrolled and unfolded, without tearing or mutilation. It is flexible and soft without injuring the skin of other surface. From the relevancy of the reference, one of ordinary skill in the art, viewing from the disclosure of Williams, would readily understand a compact folding of the sheet material is desirable and would have been obvious to combine with the soft outer package of the primary reference to allow ease of transportation. Moreover, since the modified package is square, the sheet material after it is folded is square in order to fit within the compartment.


With respect to the combination of Wewers, as the examiner has indicated above, the use of that particular reference is merely to show the shape of the shape of the bag and not for its content. Mainly, the content has already been disclosed by the base reference and Wewers need not provide that disclosure that has already been met.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,


Shian T. Luong
Primary Examiner
Art Unit 3728

Stl
November 10, 2004

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